

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RAYMOND TETRAULT,)
TIMOTHY MUELLER, AND)
RICHARD DOYLE)
)
PLAINTIFF(s),)
) Case No. 4:11-CV-00695-AGF
vs.)
)
UNITED STATES PARCEL CO.,)
)
DEFENDANT(S).)

**Response to Defendants Motion to Dismiss and
Motion for Leave to File Amended Complaint**

COMES NOW, Plaintiffs', Richard Doyle, Timothy Mueller and Raymond Tetrault, by their attorney, John D. Wendler, and for their response to Defendant's Motion to Dismiss state as follows:

1. Defendant has filed a motion to dismiss the Plaintiffs' complaint.
2. Plaintiffs do not concede any part of the motion that was filed by Defendant United Parcel Service other than the complaint should be divided into separate counts, at least one each for each plaintiff.
3. No party will be prejudiced by granting this motion to amend as the case is at its inception and discovery has not begun.
4. Granting leave to amend Plaintiffs' complaint will not impact the Plaintiffs ability to complete the F.R.C.P. 26 disclosure.
5. Because of a number of limitations Plaintiff, Ray Tetrault, will need to have his brother assist him and that process will require an extension of time.

6. Counsel for the Plaintiff's anticipates filing at least a three count amended complaint clarifying the facts relevant to the claim of each.

7. While the causes of action of the Plaintiffs may be similar the factual basis for each claim and the projected damages need to be set out in separate counts.

8. The original action filed in a Circuit Court of the State of Missouri was filed with the intention of filing an amended complaint after a number of decisions were made by the Plaintiffs.

9. For a number of reasons that are subject to privilege there was the potential that three of the Plaintiffs would have dropped from the suit in Circuit Court.

10. Plaintiff, Delbert Click, was dropped from the suit in state court.

11. Various problems with retaining the three plaintiffs in one suit have been resolved only recently, i.e. May 15, 2011.

12. While filed in the Circuit Court of the State of Missouri the various problems of joint representation would have been resolved before any significant dates or filing periods, but with the move to Federal Court date deadlines and time deadlines have been accelerated.

13. With regard to filings with the EEOC one of the plaintiffs has filed, but he has had to receive assistance in tracking down his filing.

14. Separate counts are necessary as it may be necessary to hold one Plaintiff's claim in abeyance due to find out and track down a filing with a federal agency.

15. Defendant and Plaintiff will be able to go forward with a Disclosure and all other needed items without the amended complaint being in place for a reasonable amount of time as the initial complaint does give notice of the type and nature of the claim that is being filed.

WHEREFORE, Plaintiffs pay order of this Court granting leave up to and including June 12, 2011, to file their Amended Complaint in the above cause.

By: /s/ John D. Wendler

John D. Wendler
Attorney At Law
P.O. Box 339
Edwardsville, Illinois 62025
(618) 288-9210 - Phone
(618)288-9211 - Fax
Ill Bar No. 298043
Mo. Bar No. 32854

ATTORNEY FOR PLAINTIFF(S). RAYMOND TETRAULT, ET. AL.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above was electronically mailed and mailed via U.S. Postal Service first class, postage prepaid on the 17th day of May, 2011, to attorney (s) of record:

Jovita M. Foster
Armstrong Teasdale, LLC
7700 Forsyth Blvd., Suite 1800
St. Louis, MO 63105
Attorney for Defendant, United States Parcel Co.

/s/ John D. Wendler

John D. Wendler